

REMARKS

Applicants respectfully request reconsideration of this application, and reconsideration of the Office Action dated November 3, 2003. Upon entry of this Amendment, claims 4, 5, 9, 12-27, 29, and 30 will remain pending in this application with claims 13-27, 29 and 30 having been withdrawn. Claims 1-3, 6-8, 10, 11 and 28 are cancelled by this Amendment and new claims 31-44 are added. The amendments to the claims are supported by the specification and original claims. The newly added claims are also supported by the specification. For example, newly added claim 31 finds support in the sequence listing; and claims 38 and 39 finds support at page 5, paragraph [0017]. No new matter is incorporated by this Amendment. Payment to cover the fees associated with the additional claims, including the new multiple dependent claims, is also submitted herewith.

Applicants note the Examiner's comments with respect to the priority document. Applicants submit herewith a certified translation of priority document appln. no. 101 36 984.0 and of priority document appln. no. 100 43 337.5.

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The abstract is objected to for purportedly not completely describing the disclosed subject matter. In response, Applicants submit herewith a new Abstract of the Disclosure which includes the information suggested by the Examiner.

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Claims 1-4, 6-8, 10, 11, and 28 are rejected under 35 U.S.C. §112, second paragraph, as indefinite. Claims 1-3, 6-8, 10, 11, and 28 have been cancelled by this Amendment. Thus, the rejection, as it applied to the cancelled claim is moot. In addition, claim 4 has been amended to depend from claim 9 and fully complies with 35 U.S.C. §112. Accordingly, reconsideration and withdrawal of the rejection are requested.

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Claims 1-4, 6-8, 10, 11, and 28 are rejected under 35 U.S.C. §112, first paragraph, as lacking written description.

Claims 10 and 11 are also rejected under 35 U.S.C. §112, first paragraph, as lacking written description.

Claims 1-4, 6-8, 10, 11, and 28 are rejected under 35 U.S.C. §112, first paragraph, as not being fully enabled by the specification.

In addition, claims 10 and 11 are rejected under 35 U.S.C. §112, first paragraph, as not being fully enabled by the specification.

As noted above, claims 1-3, 6-8, 10, 11 and 28 are cancelled, thereby rendering each of the above rejections, insofar as they applied to the cancelled claims, moot. Claim 4 has been amended to depend from claim 9 which is adequately described and fully enabled by the specification. Thus, the rejections applied to claim 4 are overcome and withdrawal of each is respectfully requested.

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Claim 12 is rejected under 35 U.S.C. § 112 , first paragraph, as containing subject matter that is purportedly not enabled by the specification. The Office Action asserts that the specification fails to fully comply with the requirements for deposited microorganisms. Applicants respectfully traverse.

The specification contains the accession number, a brief description of the deposit, and the name of the depository and states that the deposit has been accepted for deposit under the Budapest Treaty. *See page 18, paragraph [0058]*. The specification has also been amended to include the complete depository address. All restriction on the availability to the public of the material so deposited will be irrevocably removed upon the granting of

a patent. The above remarks overcome this rejection. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

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1-3, 6-8 and 28 are rejected under 35 U.S.C. §102(a) as anticipated by Pompejus et al. (WO 01/00843).

1-3 and 6-8 are rejected under 35 U.S.C. §102(b) as anticipated by Zhao et al. (GenBank Acc. No. AZ241095).

Claims 1-3, 6-8 and 28 have been cancelled by this Amendment. Thus, both of these rejections are moot.

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1-11 and 28 are rejected under 35 U.S.C. §102(a) as anticipated by Nakagawa et al. (EP 1108790). Applicants respectfully traverse.

Applicants submit herewith a certified translation of priority document appln. no. 101 36 984.0 and of priority document appln. no. 100 43 337.5. The present specification claims the benefit of both priority documents. Furthermore, the subject matter of 4, 5, and 9 is supported by the both priority documents. Hence, claims 4, 5, and 9 are entitled to a priority date of September 2, 2000. Nakagawa et al. (EP 1108790) is entitled to a date of June 20, 2001. Hence, in view of the certified translation of the priority documents, Nagakawa fails to qualify as prior art. Hence, this rejection is overcome and its withdrawal is requested.


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Applicants respectfully submit that this Amendment and the above remarks obviate the outstanding objections and rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees under 37 C.F.R. §§ 1.16 or 1.17 are due in connection with this filing, please charge the fees to Deposit Account No. 02-4300; Order No. 032301.216.

If an extension of time under 37 C.F.R. § 1.136 is necessary that is not accounted for in the papers filed herewith, such an extension is requested. The extension fee should be charged to Deposit Account No. 02-4300; Order No. 032301.216.

Respectfully submitted,
SMITH, GAMBRELL & RUSSELL, LLP

By:  48,195
Robert G. Weilacher, Reg. No. 20,531
1850 M Street, N.W., Suite 800
Washington, D.C. 20036
Telephone: (202) 263-4300
Facsimile: (202) 263-4329

Dated: March 3, 2004
RGW/BLN